# ANNUAL STATEMENT

Of the Liverpool and London and Globe Insurance Co., of Liverpoo!, England for the year ending Dec. 31, 1905.

Capital paid up in U. S. Assets ......\$ 12,234,948 25 Liabilities exclusive of capital and net surplus 6.972.668 49 INcome Premiums ..... 6,804,856 63 Other sources ..... 461,602 88

Total income 1905..... 7,266,459 51 Expenditures Losses ..... -.519,143 50 Dividends, none in the U.S. Other expenditures .. 2,277,920 96 Fire Business 1905

Risks written ...... 998,746,932 00 Premiums thereon .... 10,955,269 33 Losses incurred...... 3,455,760 38 Nevada Business Risks written ...... 553,985 90 Premiums received .... 18,085 35 Losses paid ...... 3,255 . 0 Losses incurred ..... 8.255 00 GEO H. MOORE, Secv.

### -0-0 ANNUAL STATEMENT

Of the Western Assurance Company of Toronto, Canada. Assets .....\$2,456,786 39 Liabilities, exclusive of capital and net surplus.... 1,707,194 79 Income Premiums ......... 2,458,857 49 rendered the decree, made in open Other sources .......... 71,450 25 court and had entered in the minutes Total income 1905 ..... 2,530,307 71 an order "that all business and all

Expenditures Losser ..... 1,543,464 07 Business 1905 Risks written ...... 3,404,284 95 Losses incurred ...... 1,141,438 e2 Nevada Business

Premiums received ..... Losses paid ..... Losses Incurred ..... C. C. rOSIER, Secty.

### ---ANNUAL STATEMENT

2,280 95

835 50

1.335 50 judge of this district."

Of the National Surety Co of Nav York, N. Y. Wm. B. Boyce, President Samuel H. Shriver, Secty. Capital deposited .... \$ .500,000 05 Assets ...... 2,216,713 88 Income Liabilities, exclusive of capital and net surplus.. 1,276.553 17 Premiums ...... 1,211 02. 1. Other bources......... 137.521 05 Total income 1905..... 1,348,562 66 Expenditures Paid policy holders... 452,628 02 Other expenditures 612,462 62 Other expenditures.... 612,402 62

1,065,030 64 Total expenditures .... Business 1905 Risks written...... 424.727.920 00 Premiums thereon.... 1,438,270 45 Losses incurred ..... 660,384 10 Nevada Business

Amt. of risks written .. Bremiums received .... 159 50 Ann of said pollers ... 32,130 00 GILBERT CONGDIN, asst. secy

#### C-C-ANNUAL STATEMENT

Of the Mutual Life Insurance Com- rule XLIII which directs that "no pany of New York Liabilities ......... 470,861,765 90 further time to plead, move, or do any Income for 1905..... Diabursements 1905 Paid policy holders ... 35,643,185 47 Pald on all other accounts. ... 15,329,781 80 Adjustment of Real Estate valua-

tions June 29..... 5,000,000 00 Total disbursements... 55,972,967 27 Nevada Business

Number of risks written Amount of risks written and paid for ...... 114,805 at Premiums received ..... 71,020 26 Losses and claims paid. 19,486 13

Lesses and claims incurred 32,486 1.: Policies in force Dec. 31, 1905 859 Amt of same ...... 1.783,880 00 W. J. EASTON, Secty. 

## OFFICIAL COUNT OF STATE STATE OF NEVADA. County of Ormsby. s. s.

John Sparks and W. G. Dougbeing first duly sworn they, (after having ascertained from shall have power to transact business the books of the State Controller the which may be done in chambers at amount of money that should be in any point within the State. All of nation and count of the money and sions that each judge may direct and asury of Nevada and found the sange trict, and shall see that it it properly correct as follows:

Coin 257.242 50 Paid coin vonchers not returned to Controller 40,911 76

Total 298,154 05 State School Fund Securities. Irredeemable Nevada State School bund 380,000 00 Mass. State 3 procent

537 000 00 bonds Nevada State Bonds 205,700 00 Mass. State 31/2 per cent 313,000 00 bonds

United States Bonds 215 000 00 Total 1,996,854 66 W. G. Douglass

John Sparks Subscribed and sworn before me this 27th day of Feb., A. D. 1906. J. Doane.

Notary Public, Ormsvy County, Nev. Custom suits and overcoats will be sold at reduced prices-and reasonable time given for payment.

No advantage in waiting-put in your order and receive your goods if we do not look beyond the strict before Christmas.

CHAUNCEY LATTA.

IN THE SUPREME COURT OF THE STATE OF NEVADA. Ebenezer Twaddle and Ebenezer Twaddle as Special Admr., of the

Estate of Alexander Twaddle, deceased, Plaintiffs and Respondents

Theodore Winters, A. C. Winters, L. W. Winters and Samuel Longabaugh...

Defendants and Appellants From 2d Judicial District Court, Wasnoe County.

Messrs. Cheney and Massey, attorneys for Plaintiffs. Alfred Chartz, attorney for Defend-

ants. DECISION The respondents have moved to dismiss the appeal from the judgment because it was not taken within one year, and to dismiss the appeal from the order of the district court denying appellants motion for a new trial, also to strike from the records the statement on motion for a new trial, upon the ground that the statement was not filed within the time prescribed by law. The appeal from the judgment is dismissed because not taken until March, 1905,, more than one year after its rendition on June 23. 1903. On that day Judge Curler of the Second Judicial District court who had tried the case at Reno and cases and proceedings that have not been completed or in the process of Other expenditures ..... 846.145 92 completion, and all new business that Total expenditures 1.05 2,389,609 09 may be brought before the court durmay be brought before the court during the absence of the presiding judge, be referred to Judge M. A. Murphy of the first judicial district court of the State of Nevada, and that he be Risks written ....... 79.649 00 requested to try, determine and dispose of all cases and business now

Pursuant to this request Judge Mu"-

phy occupied the bench in Reno until July 31, 1903, when a recess was taken until a further order of the court There was no other session until Judge Curler's return on August 17th. On July 17th, Judge Murphy, in cpan court in Reno, made an order allowing plaintiff until August 15th in which to file objection to findings. and prepare additional findings. On August 3d Judge Murphy at Carson City, and within his own first judicial district, by an ex parte order made without affidavit of Judge Curler's absence or inability, granted the defendants until September 15, 1903. within which to prepare, file and serve their notice and statement on motion for a new trial. Later exteasions were made by Judge Curler, but whether they are effectual depends upon this order, which respondents claim Judge Murphy was unauthorized to make under Section 197 of the Practice Act which provides in regard to notices and statements on motions for new trial that "the several periods of time limited may be enlarged by the written agreement of the parties, or upon good cause shown by the court, or the judge before whom the case is tried " and under district con judge, except the judge having charge \$5.064,992 88 act or thing required to be done in any cause or proceeding, unless it be shown by affidavit that such julge is absent from the state, or from som?

> Rule XLI provides: "When any district judge shall have entered upon the trial or hearing of any cause or proceeding, demurrer or motion, or made any ruling, order or decision therein, no other judge shail do any act or thing in or about said cause. proceeding, demurrer or motion, unless upon written request of the judge who shall have first entered upon the trial or hearing of said cause, proceed-same is true regarding the claims of ing demurrer or motion."

other cause is unable to act."

Section 2573 of the Compiled laws, passed after section 197 of the Pracshall possess equal coextensive and concurrent jurisdiction and power. They shall each have power to hold They shall each exercise and perform say they are members of the the powers, duties and functions of Board of Examiners of the State of the court, and of Judges thereof, and the Treasury) made an official exami- this section is subject to the provivouchers for money in the State Tre- control the business in his own disperformed."

We think under the minute order and circumstances related, the power inherent in Judge Curler to extend the time of filing the notice and statement became conferred upon Judge Murphy during the former's absence, and that Judge Murphy became the Judge in charge, endowed with the authority to grant the extension without the presentation of the affidavit showing the absence or inability of Judge Curler, as the rule requires before the order can be made by a Judge not having the business in charge.

Judge Curer's absence was presum ed to continue until his return was shown and consequently Judge Murphy's authority based upon that ab sence would likewise continue. It is said that under the first statute mentioned, the language that "the court or judge before whom the case was tried" may extend the time invalidates the order, because Judge Mur phy was not the judge before whom it was tried, and that he was not the court after he returned to Carson City. where he made the order. In a nar row technical sence this may be true. letter of the statute. But not so if we consider the intent and purpose of

the enactment, and construe it in the

light of reason as applied to the or- at the time t gants.

der this contention if he had stepped | age and dispute. through the door into the chambers | By consent of the parties in one the construction claimed, if adopted, they are of that character ordinarily granted in champers. This would filing orders of the same kind. and that the judge who had tried the cause as Judge Curler had done in ured below about filled the new him, and would have to be in court to make these simple orders extending time in actions which had been previously tried by another judge.

Appellants desired and were entitled to the time granted for the pupose of enabling them to secure from before the court in the absence of the the court reporter who had left the State, a transcript of the testimony given on the trial, which would enable them to properly prepare the state

Under Section 2573 Judge Curler could have made an order granting them the extension at any place in the State, and as during his absence Judge Murphy was requested by the Court minutes to attend to all business for him, we conclude that he was empowered to make the order at Car son City as he did, and as Judge Curler could have done, and that it was not necessary for him to make the trip to Reno and undergo the formality of opening court to enter ex parte orders simply extending time, such as are usually made out of court.

The motion to dismiss the appeal from the order overruling the motion ! for a new trial and to strike out the; statement is denied.

ON THE ME.ITS

This action was brought by Alexan-Ebenezer Twaddle, as co-owners, for the in his measurement and that of nch containing 203.92 acres Washoe county. The answer denies the allegation of the complaint sets up the ownership by the defend Winters, of a tract of land obut on: mile wide and two miles long, and alleges appropia ons by them or their grantors aggregating 600 inches flowing under a four inch pressure, by the year 1867, which are stated to be prior to any diversion of the water by the plaintiffs, and asserts a claim for 12fordant Longabaugh to 180 inches for fluming wood, lumber and ice from large tracts of timber lands owned by him, and for domestic use and irrigating garden on forty acres at Ophir. Witnesses appeared to sustain, and

others to dispute plaintiffs' right as initiated a half century ago, and the these defendants. The record affords a glimpse of pioneer history at a per fod previous to the naminar a ce tice Act as quoted, enacts: "The dis- State into the Union, and portrays trict judges of the State of Nevada the building and decay of saw and quartz mills and the rise and decline of towns by the banks of the stream the waters of which are here in litiga court in any county of the State. tion. One witness testified that the per Twaddle ditch, was completed in 1857, and that he turned the water

Hawkins ditch, new known as the u, Nev, than on the 27th day of Feb " of Judges at Chambers. Each judge into it that year. Others stated that water was running in the ditch and flume about that time, and that these were aparently in the same place and of about the same capacity as at present

On behalf of the defendant other witnesses testified that they were over the ground and saw no ditch and that none existed there during those earlier years. It is unnecessary for us to detail the conflicting portions of the evidence. These were careful fully considered by the district cour and for the reasons stated in its docsion, enforced by statements in dead; made many years before any controversy arose, the finding that this ditch was constructed and a prior appropriation of water made through it 857 finds ample support. At first on he Twaddle ranch land was plowed or only a garden and a small piece of grain and but little hay was cut. A easonable time was allowed in whi in to extend and complete the use of the ater that would flow through he litch and the quantity of land irrigated was increased. The lower Pwaddle ditch was constructed from Ophir Creek at some time prior to 869 and runs to and irrigates the astern portion of the plaintiffs' ranch t is shown that since that year at east their lands have been in practially the same state of custivation

and the meddling of judges in cases stand that during the last ten or fif- the water of Open Creek awarded to law even in the state in which they which they had not tried or which teen years he had been using twice as the plaintiff, because he ran ther were rendered. were not properly under their control, much water from Ophir Creek in ad- water in his flur e past their ditta In the recent case of Kansas v. Colo and yet in the case of the absence or dition to that from other streams, as and into one owned by Winters, and rado before the Supreme Court of the inability of the judge who tried the he used during the first ten years that joined with the other defendants in United States, Congressman Needham action, to grant relief, or allow ex- he cultivated his lands. As he claims answering and resisting the rights of testified that irrigation had double tensions to be made to deserving liti- and uses more than the plaintiffs, we plaintiffs. The decree does not pre- and trebled the value of property in conclude that this large increase in vent him from taking any water in Fresno and King countries, Califor-The argument advanced concedes his diversion of the waters of the the creek in excess of the amount nia,, that they nad to depart from the that if Judge Murphy had gone to streams since the completion of their awarded to plaintiffs. Nor does it in doctrine of riparian rights and under Reno and entered the order in open oppropriation which has remained any way interefere with the water becourt it would have been good, but un- stationary may account for the short-

and made it, it would have been void. court the district judge, accompanied Orders extending the time for filings by a civil engineer who had testified are business usually, or properly as a witness for the defendants, view transacted in chambers and under ed the premises and made measure-Section 2573 can and ought to be ments. At the point of least carrymade as effectually in any part of the ing capacity of the upper Twaddle State by the judge having the case in ditch, which is the old square flume charge, as if made by him in cham-near the Bowers' Mansion and grave, bers or in open court. Judge Murphy he measured the flow at 184 inches was merely acting for Judge Curler and the water lacked more than two during his vacation, but by analogy inches of reaching the top. A survever had testified for the plaintings would, in every case where a district that its capacity was 182 inches at judge dies, resigns or is succeeded. this point, and that the canacity of invalidate the orders extending time 100 feet of old flume remaining up under section 197 made out of court | nearer the head of the ditch which by his sucessor in office, although had been imporred by age and abaudoned, and supplanted by a new V flume built above the old one by the mean a distinction and two rules for plaintiffs in 1905, was 150 inches. At this point the indee found that 131 this instance, could make the order in flume, and he estimated that the oil chambers, while his successor could flume would carry from 200 to 200 inso make it only in the cases tried by ches. From his examination of the premises and the character of the soil the court was of the opinion that the plaintiffs required, and were entitled to, at least the amount of water than had flowing in the flume at the time he made the examination, and he do erood them a prior right to 184 miners inches running under a feur inch pressure or 3 34-50 cubic feet per secand from April 15th to Nov. 15th each year, and 20 inches or 2.5 of one cubic fact per second for domestic use and watering stock at other times. It is claimed the amount at lowed is not warranted by the evidence because more than the canacity of the upper Tweddle ditch as shown by the testimony mentioned fiving it at 100 inches at the point above the mansion, and at 150 inches along the 100 feet of old flume through which the water flowed prior

to 1900. It is not necessary to determine whether the court on its own examin ation and measurement may allow a quantity beyond the range of the evidence, nor whether the surveyor could actually estimate the capacity of the 100 feet of old flume without knowing the volume and velocity of the water that entered it, nor whether the variation of one part in pinety one or the difference between 189 in 450 miners inches running under a six ed as teo triffing to be material and Creek, alleged to have been approp | as a slight discronance to be expected swampy. The quantity of water a'- twelve in this regard. lowed by the decree seems very liberal, both for irrigation and for 12- along the banks of Ophir Creek were vicinity varied in their estimates of the amount poceusary from cue and

The evidence indicated that the plaintiffs had used as much water as that awarded to them and more, and had uniformly preduced good crops Much of their land is sandy with considerable slope. After examining the soil and viewing the quantity of water as it ran on the premises, the court agreed with the testimony of the plaintiffs that that amount was nexessary and adopted a mean between the highest and lowest estimates The quantity of water requisite varles greatly with the soil, seasons. crops, and conditions, and we cannot

say that the allowance is excessive, Alexander Twaddle testified that there were times during the summer widently short periods after the land had been irrigated, when it was not necestary to use as much as the unper ditch full of water. On such ocrasions and whenever it is not neeled by the plaintiffs it should be turned to the defendants, if they have any beneficial use for it, and not permitted to waste. It may be implied by the law, but it is better to have decrees specify, and especially so la this case, in view of the testimony stated and of the perpetual injunction. that the award of water is limited to a beneficial use at such times as it is needed, Gotelli v. Cardelli, The point and purpose of diversion may be changed if such change does not interefere with the prior rights.

Under the testimony of Alexander Twaddle that the irrigating season closes about the first of October, and that sometimes he used water a little later, we think probably the decree should limit plaintiffs' right for innd irrigation that they were in at the rigating purposes to October 15th. ime of the commencement of this This may allow defendant. Longa action, and that during that period baugh to flume wood a month earlier laintiffs' used all the water they at this season when the water is low. needed from Ophir Creek without in and allow Winters more for watering Legislature have recognized the ad-

flow to which plaintiffs are entitled.

father and predecessor in interest of the plaintiffs, conveyed to M. C. Lake sions, and that the doctrine of prior one-third of that certain water ditch and flume known as the Twaddle ditch, leading from what is now known as the Ophir Creek to the land of said Twaddle. southerly from said creek through the lands of C. F. Wooten and M. C. Lake, with the privilege of running water through 1860. said flume and ditch to what is known as the Bowers slansion or grounds the expense of maintaining said ditch and flume to be paid by each in proportion to their interests in same. It will be noted that this language does not purport to grant any water. but rather the right to convey water inches of water which he had meas- and that it amounts to a sale of a third interest in the disch with at least the privilege to that extent of running in it water which Lake had or might appropriate. Later the defendant Theodore Winters, acquired the Bowers Mansion and grounds through conveyances which did not mention any interest in this disch, it does not appear that Lake or hi grantors ever made any use of the ditch or ever contributed towards its

> Alexander Twaddle stated on il stand that he did not claim all this ditch and that the plaintiffs owned two thirds of it. Whether under this deed the one-third interest in the ditch became appurtenant to the Bowers land when it was never used for its irrigation, and later passed with the land without being mentioned, and whether after the tapse of twenty-five years without any use or contribution towards its repair the grantee of Lake has a third interest as a co-owner in the ditch and that part of the flume which has not becar superceeded by the new one built by plaintiffs, are questions which w need not determine, for they, and that part of the judgment of the court which gives the plaintiffs the "exclusive use of the upper Twaddle Ditch and Flume," are not within the allegations of the pleadings which contain no reference to the exclusive use cf, or a third or any interest in the

ditch. Under the assertion in the con-plaint of the apropriation of water for the indoment for the 24 inches and a flume" the court properly de- Slot machine license ...... 282 00 the construction of the Vistems, would have that right in the upper the court that se plaintiffs and an undivided two-thirds, as the court thirty-one years before the commence, fendants in the lower ditch, but ment of this suit used a nortion of whether the grantee of Lake owns the water through the tower read and can assert a right to an undividle ditch. It is urred that 184 inches ded one-third interest, is a question is more than required for the irrign- as foreign as the ownership of the tion of plaintiffs' reach and that this mansion, and one which ought no is especially so because a few of their to be determined by the judgment in 170 45 seres of cultivated land lies the absence of any issue or allegation above the upper diten from Only concerning it. The defendants speri-Creek and a small portion is natura'ty fically excepted to finding number Patents for defendants' lands lying

> mestic use and watering stock. En- issued to their grantors before the gineers and others testified that one passage of the Act of Congress of Co. School fund Dist. 3. . . . . . 30 70 half and three fifths of an inch of July 26, 1866 and it is ascerted that Co School Fund Dist. 4.....24 00 water per acre was sufficient, while for this reason a vested Common for the plaintiffs, farmers from the Law riparian right to the flow of the waters of Opnir Creek accrued of which they could not be deprived by one half to three and one half inches that Act If this were one defendents State School fund, Dirt 1 ... 165 09 might as well be considered mader the circumstances shown to have lost that right by acquiescence in the continued diversion of the water by p.a.a. lifts for a period many times longer than that provided by the statute of Cash in Treasury October 1905 limitations, but in this contention counsel is in error. We do not wish to consider seriously or at length an argument by which it is sought to have us over-rule well reasoned decisions of long standing in this and other arid states, and in the Supreme Court of the United States, such as Jones v. Adams, Reno Sampin Works v. Stevenson and Broder v. Water Co., declaring that this statute was rather the voluntary recognition stituting a valld claim to its contin-more and more apparent that the law of ownersalp of water by prior appropriation for a beneficial purpose is essential under our climatic conditions to the general welfare, and that the Common Law regarding the flow of streams which may be unobjection able in such localities as the Britis Isles and the coast of Oregon, Washington and northern California where rains are frequent and fogs and winds State School Dist 4, fund...... 19 29 laden with mist from the acean pre- Agl. Assn. Fund A...........680 824 able under our sunny skies where the lands are so arid that irrigation is required for the production of the crops necessary for the support and prosperity of the people. Irrigation is the life of our important and increasing agricultural interests which would be strangled by the enforce

Congress is apropriating millions for storage and distribution and our terruption except in 1887, 1898 and stock without material injury to the above for use in irrigation instead or vantages of conserving the water

ment of the riparian principle.

t as begun, it plaintiffs. Although his flume was having it flow by lands of riparian dinary rules of practice, and give due appears that the plaintiffs' had not exected many years ago Longabaugn owners to finally waste by sirking and weight to the later section. Appar- materially incre at their opprop is did not the vany prior appropriation evaporating in the desert. The Cath ently the object of this legislation was thon in the decree properly enjoins him fornia decisions cited for appellants to prevent the granting of extensions. Theodore winters admitted upon the from inter ere is with that part of may no longer be considered good.

longing to him coming from other make any future development; that sources. This he may turn into there has been a departure from the Ophir Creek and take out lower down principles laid down in Lux v. Haggin, provided he does not diminish the because at that time the value of water was not realized, that the deci-On May 30, 1877, John 'I waddle, the soin has been practically reversed by the same court on subsequent occaappropriation and the application of water to a beneficial use is in effect in force now in that State.

We must decline to award the dafendants the waters of the stream as riparian proprietors and patentees of the land along its banks prior to

The case will be remanded for a new trial unless there is filed on tae part of the plaitniffs within thirty days from the filing hereof, a writtea consent that the judgment be modified by limiting the use of the 184 .n. ches, or 3 34-50 cubic feet no carmin or water awarded to the plantal, a such times as may be necessar, the irrigation of their crops or lands or for other beneficial purposes, hatween April 15 and October 15 of ach year, and by allowing plainting for the remainder of the time the Al inches awarded to them, when necessary for their household, domestic and stock purposes, and by striking from the decree the words:

"It is further endered, adjudged and decreed that said plaintiffs have th€ accusive right to use and the exclusive use of said Upper Twaddle Ditch and Flume at all seasons of the year. If such consent is so filed the aistrict court will modify the judgmen' accordingly and as so modified tha judgment and decree will stand affirm-

Talbot, J.

We concur: Fitzgerald, C. J.

Nereros .

Quarterly Report. Ormsby County, Nevada. Receipts.

Filed Feb. 1, 1906. Balane in County Treasury at end of last qua.ter....\$40023 364 Gaming licenses ............ 1057 50 Pent of county bidg.......250 00 ist. Instalment taxes..... 14924 21 61,077 36% Total

Disbursements. Agl Assn. Bond Fund, Series Agl. Assn. Bond Fund, Series

Co. School Fund, Dist, 1..... 288 95 Co. School fund, Dist. 2.....151 20 State School fund, Dist. 1., 2605 00 Star a "hool fund, Dist 2 ... 160 00 State School "mid dist 3 ... 120 00 Special building .........5850 00 

21,968 59% Re pitulation. ......40023 36% Receipts from Oct. 1st to Dec 30, 1905 ......21054 003<sub>8</sub> Disbursements from Oct. 1st to Dec 30, 1905 ......21968 593%

Balonce cash in County Treas. January 1, 1906,...... 29108 7753 H. DIETERICH, County Auditor

Recapitulation Co. Schood Dist. 1, fund. . 7638 221/2 Co. School Dist. 2, fund.....139 64 Co. School Dist. 3, fund. . . . . 190 26% Co. School Dist. 3, fund.....425 55 State School Dist. 1, fund...1608 06 State School Dist. 2, fund.....77 51 State School Dist. 3, fund. . . 371 39 State School Dist. 3, fund. . . 371 39 Agl. Assn Fund Special...1918 94 Co. School Dist. fund - special

Co. School Dist. fund 1, library 

Co School Dist. fund 3, library ...... R 54 Co. School Dist fund 4, library

..... C-10 \$14TAR 77% Total

H. B. VAN ETTEN County Treasurer